IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

U.S. AXMINSTER, INC. — PLAINTIFF COUNTER-DEFENDANT

v. — Civil Action No. 4:95cv332-D-B

CALVIN B. CHAMBERLAIN, JR. — DEFENDANT COUNTER-PLAINTIFF

MEMORANDUM OPINION

Presently before this court are the Defendant's "Objections to Magistrate's Order Denying Motion for Leave to Amend and Appeal." Having considered said objections and the opposition thereto, the court is of the opinion that the objections are not well-taken and should be overruled.

. Facts

This dispute concerns axminster carpet loom technology. Axminster carpet is a type of floor covering in which the pattern is sewn into the carpet rather than stamp-dyed on it. The Plaintiff U.S. Axminster, Inc., ("Plaintiff" or "U.S. Axminster") manufactures this type of carpet, and the Defendant Calvin B. Chamberlain, Jr., ("Defendant" or "Mr. Chamberlain") is a former employee of the Plaintiff. For a number of years, the Plaintiff and the Defendant worked together developing a new type of axminster carpet loom, which the parties refer to as the "computerized axminster loom."[1] This dispute began when the Defendant left the Plaintiff's employ and allegedly shared trade secrets concerning the loom with the Plaintiff's competitors.

What issue this court addresses specifically in this opinion is the Defendant's desire to amend his pleadings. Central to this issue are the following dates: On October 20, 1995, the

[1] The parties use other labels as well, such as "651 Loom" and "C.A.L." Also, in its complaint the plaintiff uses the phrase "Secret Process and Equipment."

Plaintiff commenced the present action. On December 21, 1995, the Defendant filed his answer and counterclaims. By order dated February 16, 1996, Magistrate Judge Eugene M. Bogen provided, *inter alia*, that motions for leave to amend the pleadings shall be filed by October 28, 1996. U.S. Axminster v. Chamberlain, Civil Action No. 5:95cv332-D-B (N.D. Miss. Feb. 16, 1996) (Case Management Plan and Scheduling Order); see Uniform Civil Justice Expense and Delay Reduction Plan § 3(I)(B)(8)(a) (requiring judicial officer to set deadline for amending pleadings). On May 30, 1997, some seven months after the October 28, 1996, deadline, the Defendant filed a motion for leave of court to amend his pleadings. By order dated July 16, 1997, Judge Bogen denied the Defendant's motion. U.S. Axminster v. Chamberlain, Civil Action No. 5:95cv332-D-B (N.D. Miss. July 16, 1997) (Order Denying Defendant's Motion for Leave of Court to Amend Pleadings).

Now the Defendant asks this court to set aside Judge Bogen's denial. This court may set aside a Magistrate Judge's order on a non-dispositive matter, such as the one at bar, only if it finds the order "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A).

II. Discussion

When a party moves to amend his pleadings, "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Emphasizing how freely leave must be given, the United States Supreme Court requires courts to provide justifying reasons when they deny leave:

> In the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, . . . [or] undue prejudice to the opposing party by virtue of allowance of the amendment . . . — the leave sought should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright

> refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 222 (1962). In the case at bar, the Magistrate Judge cited two reasons for denying the Defendant's motion for leave to amend: undue delay and undue prejudice. U.S. Axminster v. Chamberlain, Civil Action No. 5:95cv332-D-B (N.D. Miss. July 16, 1997) (Order Denying Defendant's Motion for Leave of Court to Amend Pleadings) ("Of considerable concern to the court is the delay in bringing this motion, and the delay plaintiff contends will occur if the counterclaims are added to this suit.") If either of these reasons is neither clearly erroneous nor contrary to law, then this court must overrule the Defendant's objections.

. Undue Delay

The Defendant acknowledges that his motion for leave to amend pleadings fell seven months past the deadline established by the Case Management Plan and Scheduling Order. The Defendant asserts, though, that he only realized he could file the motion when he discovered new evidence during a deposition of the president of U.S. Axminster, Samuel H. Silver, on February 3, 1997. During that deposition, the Defendant explains, Mr. Silver stated that U.S. Axminster recently utilized computerized axminster looms to fulfill a contract with two governmental agencies. The Defendant asserts that this evidence provided him with new counterclaims. The new counterclaims include claims for damages for "wrongful utilization of Chamberlain's ideas and inventions" and "reasonable compensation to Chamberlain for the unjust enrichment to [U.S. Axminster]." Additional Counterclaims of Calvin B. Chamberlain, Jr., at 6. The Defendant argues that before the deposition he had no ground to add these counterclaims, so his delay in

bringing the motion to amend was not undue.

The Defendant's justification for the seven-month delay did not satisfy the Magistrate Judge. As the Magistrate Judge explained, the Defendant still waited until May 30, 1997 — nearly four months after discovering the new evidence — to file his motion to amend. More importantly, the Magistrate Judge doubted that the evidence was "new." As the Magistrate Judge explained,

> [T]he discovery responses of USAX . . . reveal that USAX continued to use the "Secret Process," or the loom based on Chamberlain's idea, after [Chamberlain's] termination, so this information was not first revealed during Silver's deposition. In fact, it is clear from reading the complaint that USAX would continue to utilize the "Secret Process" since it considered it to belong to the company.

U.S. Axminster v. Chamberlain, Civil Action No. 5:95cv332-D-B (N.D. Miss. July 16, 1997) (Order Denying Defendant's Motion for Leave of Court to Amend Pleadings). As the Fifth Circuit recently stated, "[I]n exercising its discretion to deny leave to amend a complaint, a trial court may properly consider (1) an 'unexplained delay' following an original complaint, and (2) whether the facts underlying the amended complaint were known to the party when the original complaint was filed." Southmark Corp. v. Schulte Roth & Zabel, 88 F.3d 311, 316 (5th Cir. 1996) (citations omitted); see also Pyca Indus., Inc. v. Harrison County Waste Water Management Dist., 81 F.3d 1412, 1420 (5th Cir. 1996) (upholding denial of motion to amend because responses to discovery requests made during prior year provided movant with underlying facts to support his new claim); Wimm v. Jack Eckerd Corp., 3 F.3d 137, 140 (5th Cir. 1993) (upholding denial of motion to amend because movant "knew of facts underlying their mislabeling claim before this action commenced"); Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594, 599 (5th Cir. 1981) ("[A party's] awareness of facts and failure to include them in the

complaint might give rise to the inference that the [party] was engaging in tactical maneuvers to force the court to consider various theories seriatim."). This court cannot say that it was either clearly erroneous or contrary to law for the Magistrate Judge to find that the Defendant knew the facts supporting his new counterclaims well prior to Mr. Silver's deposition.

Further, this court notes that the Defendant proposes to add far more than his "wrongful utilization" and "unjust enrichment" counterclaims. The Defendant seeks the following additional relief: (1) a declaratory judgment that the Defendant is the sole owner of his ideas and inventions, (2) alternatively, a declaratory judgment that the Defendant and U.S. Axminster jointly own the ideas and inventions, and (3) alternatively, royalties "some fifteen paragraphs to his statement of facts, most of which have nothing to do with the information the Defendant allegedly discovered at the deposition of Mr. Silver. In some of the paragraphs, for example, the Defendant argues that he developed the computerized axminster loom outside the course and scope of his employment. Addressing these additions, the Magistrate Judge stated that the Defendant is proposing "a new twist to the lawsuit which certainly should have been added earlier, and which was not 'discovered' through Silver." U.S. Axminster v. Chamberlain, Civil Action No. 5:95cv332-D-B (N.D. Miss. July 16, 1997) (Order Denying Defendant's Motion for Leave of Court to Amend Pleadings). Like the Magistrate Judge, this court finds no connection between much of what the Defendant seeks to add and what the Defendant claims he discovered at the deposition of Mr. Silver. Indeed, most of the Defendant's proposed amendments — such as the claim that he developed the computerized axminster loom outside the course and scope of his employment — concern the thoughts and actions of the Defendant himself. Therefore, this court finds that the Magistrate Judge's reasoning is neither clearly erroneous nor contrary to law.

. Undue Prejudice

The Magistrate Judge found that the Defendant's amendments would lead to at least four months of additional discovery and a continuance of the trial until the following year. The discovery, which the Plaintiff asserts would be directed at Mr. Chamberlain's claim that he developed the computerized axminster loom at his home, would include depositions of Mr. Chamberlain's family, former associates and alleged suppliers, and it would cost the Plaintiff considerably. Discussing undue prejudice, the Fifth Circuit has stated, "[S]hould the new theory necessitate reiteration of discovery proceedings, [the non-movant] would be prejudiced." Dussouy, 660 F.2d at 599 (adding that trial court may solve prejudice by ordering movant to pay non-movant's discovery costs). A well-recognized treatise agrees, explaining that "if the amendment substantially changes the theory on which the case has been proceeding and is proposed late enough so that the opponent would be required to engage in significant new preparation, the court may deem it prejudicial." 6 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1487 (1990). Considering the significant new preparation the amendments would require in the case at bar, the Magistrate Judge refused to grant the Defendant's motion for leave to amend. This court cannot say the refusal was either clearly erroneous or contrary to law.

Incidentally, in his Memorandum of Authorities in Support of Chamberlain's Objections, the Defendant quotes[2] a section of WRIGHT & MILLER. This court finds the section particularly

[2] Actually, the Defendant's quotation is in error. The Defendant's quotation reads, "A party who delays in seeking an amendment *is not* acting contrary to the spirit of the rule . . . ." Memorandum of Authorities in Support of Chamberlain's Objections, at 10 (emphasis added). This court's copy of WRIGHT & MILLER provides differently: "A party who delays in seeking an amendment *is* acting contrary to the spirit of the rule . . . ." 6 CHARLES A. WRIGHT ET AL.,

instructive on the relationship between undue delay and undue prejudice. An excerpt of the sections follows:

> A party who delays in seeking an amendment is acting contrary to the spirit of [Rule 15] and runs the risk of the court denying permission because of the passage of time. In most cases, delay alone is not a sufficient reason for denying leave. However, an amendment clearly will not be allowed when the moving party has been guilty of delay in requesting leave to amend and, as a result of the delay, the proposed amendment, if permitted, would have the effect of prejudicing another party to the action.

6 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1488 (1990).

III. Conclusion

Upon careful consideration of the record in this cause, the submissions of the parties, and the order of the Magistrate Judge, this court cannot say that any portion of Magistrate Judge Bogen's order dated July 16, 1997, is either clearly erroneous or contrary to law. As such, this court shall overrule the Defendant's objections to that order and shall not disturb the order of the Magistrate Judge

A separate order in accordance with this opinion shall issue this day.

This the ___ day of September 1997.

_____
United States District Judge

FEDERAL PRACTICE AND PROCEDURE § 1488 (1990) (emphasis added).